

Pub. Imp. _____
Govt. Grnt. _____
Emer. _____
IPO Required _____
P. Hmgs. _____
Pgs. 21
Filed: 11-4-03

Sponsored by: Wright

First Reading: _____

Second Reading: _____

COUNCIL BILL NO. 2003 - 364

SPECIAL ORDINANCE NO. _____

AN ORDINANCE

1 APPROVING a Declaration of Restrictive Covenant and Grant of Access with MDNR for
2 the purpose of restricting use of a certain part of the Quarry property at
3 National Avenue and East Trafficway, and authorizing the City Manager or
4 the Assistant City Manager to execute the document.
5
6

7
8 BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SPRINGFIELD, MISSOURI, as
9 follows:
10

11 Section 1 - The City Council approves a Declaration of Restrictive Covenant and
12 Grant of Access with MDNR for the purpose of restricting use of a certain part of the
13 Quarry property at National Avenue and East Trafficway, and authorizes the City Manager
14 or the Assistant City Manager to execute the Declaration of Restrictive Covenant and Grant
15 of Access with MDNR, said Declaration to be substantially identical in form and content as
16 Exhibit I attached hereto.
17

18 Section 2 - This ordinance shall be in full force and effect from and after passage.
19
20

21 Passed at meeting: _____
22
23

24 _____
25 Mayor

26 Attest: _____, City Clerk
27

28 Approved as to form: [Signature], City Attorney
29

30
31 Approved for Council action: [Signature], City Manager
32
33
34

DECLARATION OF RESTRICTIVE COVENANT AND GRANT OF ACCESS

This Restrictive Covenant and Grant of Access entered into as of this _____ day of _____, 2003, by and between City of Springfield, having a mailing address of 840 Boonville Avenue, Springfield, Missouri 65802, as party of the first part, and Missouri Department of Natural Resources (department), a political subdivision of the State of Missouri, having a mailing address of P.O. Box 176, 205 Jefferson Street, Jefferson City, Missouri 65102, as party of the second part. City of Springfield entered into a Letter of Agreement pursuant to the Voluntary Cleanup Program, § 260.565, *et seq.*, RSMo, with the department for the former Ash Grove Quarry, a site of environmental contamination located at East Trafficway and National in the City of Springfield, Missouri, as shown on the site map attached hereto as Exhibit A, hereinafter referred to as "the Property," and more particularly described as follows:

See attached Exhibit B

The Agreement requires City of Springfield to file a Restrictive Covenant and Grant of Access with the Greene County Recorder of Deeds for the Property in the event that contaminants of concern remain at the site above unrestricted land use levels for any reason following the investigation and remediation of the site under the Brownfields/Voluntary Cleanup Program (B/VCP).

Pursuant to the Agreement, City of Springfield implemented certain response activities at the Property, including the following:

- Dewatered former quarry of standing water
- Installed six soil-gas implants for monitoring methane gas on portion of quarry containing demolition debris.
- Monitored sample results of soil-gas survey (methane) for four quarters
- Levels of methane have decreased over time but still exceed unrestricted land use levels; therefore a restrictive covenant to limit buildings and subsurface activities on site is warranted

Because contaminants of concern will remain at levels above those appropriate for unrestricted use of the property, this Restrictive Covenant is being recorded with the Greene

Declaration of Restrictive Covenant and Grant of Access
Page 2

County Recorder of Deeds for the purposes of protecting public health and safety, the environment, and to prevent interference with the performance, operation, and maintenance of any future response activities selected and/or undertaken by the department, any party acting as an agent for the department, or any party acting pursuant to a work plan approved by the department.

For the purposes of this Restrictive Covenant and Grant of Access, the term "Property Use A" refers to property whose use is unrestricted and that is either being used for residential use, or is zoned for residential use, or access to the Property is not restricted and children under 18 years of age are on the Property more than 250 days per year. "Property Use B" refers to property not included in "Property Use A", which is publicly accessible with public access limited to non-routine visits, and where visitors are not supervised while on the property, commonly referred to as "commercial use." "Property Use C" refers to property not included in "Property Use A" or "B" which is not publicly accessible, and where visitors are supervised while on the property, commonly referred to as "industrial use."

If any provision of this Restrictive Covenant and Grant of Access is the subject of any laws or regulations established by any federal, state, or local government, the stricter of the two standards shall prevail.

NOW THEREFORE, City of Springfield, 840 Boonville Avenue, Springfield, Missouri 65802 (hereinafter referred to as the "Owner"), hereby imposes restrictions on the Property and covenants and agrees that:

1. Purpose.

In accordance with the Agreement, the purpose of this Restrictive Covenant is to assure:

- A. That the Property is used in a manner consistent with the risk assessment and resulting risk-based cleanup standards for the Property, which assessment has either been prepared or approved by the Missouri Department of Health and Senior Services.

2. Restrictions Applicable to the Property.

Restrictions apply to the smaller surveyed parcel of the Property located on attached Exhibit C.

In furtherance of the purposes of this Restrictive Covenant, Owner shall assure that use, occupancy, and activity of and at the Property are restricted as follows:

A. **Commercial Use (Scenario B):** The Property currently meets the department standards for restricted commercial use (Property Use B) and, based on reports on file at the department offices in Jefferson City, Missouri, the contaminants present pose no significant present or future risk to human health or the environment based on restricted use of the Property. No further response action for the Property is required by the department as long as the Property is not to be used for residential (Property Use A) or other purposes constituting unrestricted use. The Property shall not be used for purposes other than commercial. If any person desires in the future to use the Property for residential or other purposes constituting unrestricted use, the department must be notified 120 days in advance and further analyses and, as necessary, response actions will be necessary prior to such use. The Property may not be used in a manner such that the definition of Property Use A would define the use of the site.

B. That Buildings are not constructed over soils or ground water at the Property contaminated with substances in concentrations exceeding the criteria established by the department or that pose a risk of forming dangerous levels of landfill gas vapors inside such buildings.

The Owner shall prohibit all activities as presented above that will result in human exposures above those specified in the site assessment, risk assessment or remedial action plan performed or approved by the Missouri Department of Health and Senior Services for the Property or that would result in the release of a hazardous substance that was contained as a part of the remedial action.

3. **Potential Hazards.**

Except as provided in Paragraph 7 below, no action shall be taken, allowed, suffered, or omitted if such action or omission is reasonably likely to:

A. Create a risk of migration of contaminants or a potential health hazard to human health or the environment.

4. **Alterations of Property.**

Owner shall not make, or allow or suffer to be made, any alteration of any kind in, to, or about any portion of the Property inconsistent with this Restrictive Covenant unless the Owner has first recorded the department's written approval of such alteration upon the land records of Greene County Recorder of Deeds. The Owner may appeal the department's decisions regarding proposed alterations to the Missouri Hazardous Waste Management Commission pursuant to 10 CSR 20-15.010(9).

5. Interfering Activities.

The Owner shall prohibit all activities on the Property which may interfere with the response activities, operation and maintenance, long-term monitoring, or measures necessary to assure the effectiveness and integrity of the remedial action.

6. Emergencies.

In the event of an emergency which presents a significant risk to human health or the environment, the application of Paragraph 3 above may be suspended, provided such risk cannot be abated without suspending such Paragraph and the Owner:

- A. Immediately notifies the department of the emergency;
- B. Limits both the extent and duration of the suspension to the minimum reasonably necessary to adequately respond to the emergency;
- C. Implements all measures necessary to limit actual and potential present and future risk to human health and the environment resulting from such suspension; and
- D. Implements a plan approved in writing by the department, on a schedule approved by the department, to ensure that the Property is remediated or restored to its condition prior to such emergency.

7. Grant of Access to the department.

Owner hereby grants and conveys to the department, its agents, contractors, and employees, and to any person performing pollution remediation activities under the direction thereof, access to the Property. Pursuant to this Agreement, the department, its agents, contractors, and employees, and any person performing pollution remediation activities under the direction thereof, may enter upon and inspect the Property and perform such investigations and actions as the department deems necessary for any one or more of the following purposes:

- A. Ensuring that use, occupancy, and activities of and at the Property are consistent with this Restrictive Covenant;
- B. Ensuring that any remediation implemented complies with state law, including, but not limited to, § 260.350, *et seq.*, RSMo; § 260.565, *et seq.*, RSMo; § 260.435, *et seq.*, RSMo; § 260.500, *et seq.*, RSMo;
- C. Performing any additional investigations or remediation deemed necessary to protect human health and the environment as related to the B/VCP-approved remedial action plan;
- D. If engineering controls are used: Ensuring the structural integrity of any engineering controls described in this Restrictive Covenant and Grant of Access and their continuing effectiveness in containing contaminants and limiting human and ecological exposure to the contaminants.

8. **Notice and Time of Entry onto Property.**
Entry onto the Property by the department pursuant to this Agreement shall be upon reasonable notice (not less than 2 weeks) and at reasonable times, provided that entry shall not be subject to these limitations if the department determines that immediate entry is necessary to protect human health or the environment.
9. **Notice to Lessees and Other Holders of Interest in the Property.**
Owner, or any future holder of any interest in the Property, shall cause any lease, grant, or other transfer of any interest in the Property to include a provision expressly requiring the lessee or transferee to comply with this Restrictive Covenant and Grant of Access. The failure to include such provision shall not affect the validity or applicability to the Property of this Restrictive Covenant and Grant of Access.
10. **Enforceability of Restrictions; Persons Entitled to Enforce Restrictions.**
The restrictions in this Restrictive Covenant on use, occupancy, and activity of and at the Property shall be enforceable in an appropriate Court by Owner and/or by the department, their successors, transferees, and assigns. Owner agrees that the restrictions are enforceable, and agrees not to challenge the appropriate circuit court's jurisdiction. If the department believes that the Owner has failed to comply with the terms of the Restrictive Covenant or Institutional Control Contract, within 30 calendar days of notice from the department that a deficiency has been found the Owner shall respond with a proposed plan to remedy the deficiency. If the Owner fails to remedy the deficiency or the remedy is unacceptable to the department, the department may order compliance and seek judicial enforcement. Furthermore, the department may take enforcement action against the Owner and impose, as a last resort, any applicable penalties.
11. **Written Notice of Property Conveyance Required.**
The Owner shall provide written notice to the Director of the department, of the intent to transfer an interest in the Property not less than 14 days prior to the expected date of transfer. This notice shall include the name and business address of the transferee and the expected date of transfer.
12. **Property Conveyance – Continuance of Provisions.**
The Owner shall not convey any title, Access, or other interest in the Property without adequate and complete provision for the continued implementation, operation, and maintenance of any remedial action that has been implemented on the Property and without assuring prevention of the releases and exposures described in the provisions of Paragraph 1, above.

13. Duration of Restrictive Covenant.

The restrictions and other requirements described in this Restrictive Covenant and Grant of Access shall run with the land and shall be binding upon any future Owners, heirs, successors, lessees, or assigns and their authorized agents, employees, or persons acting under their direction or control. This Restrictive Covenant and Grant of Access shall continue into perpetuity, unless and until rescinded by the department. A copy of this Restrictive Covenant and Grant of Access shall be provided to all heirs, successors, assigns, and transferees of Owner.

If any provision of this Restrictive Covenant and Grant of Access is held invalid by any Court of competent jurisdiction, invalidity of any such provision shall not affect the validity of any other provisions hereof. Also, such provisions shall continue unimpaired in full force and effect.

14. Amending, Modifying, or Rescinding the Restrictive Covenant

This Restrictive Covenant and Grant of Access shall not be amended, modified or terminated except by a written instrument executed by and between the Owner at the time of the proposed amendment, modification, or termination and the department. Within five (5) days of executing an amendment, modification, or termination of this Restrictive Covenant and Grant of Access, the Owner shall record such amendment, modification, or termination, on the appropriate form provided by the department, with the Greene County Recorder of Deeds, and within five (5) days thereafter, the Owner shall provide a true copy of the recorded amendment, modification, or termination to the department.

In the event the department determines that risks posed by the site have substantially changed subsequent to the execution of this Restrictive Covenant and Grant of Access (e.g., contaminant levels at the site change, or cleanup levels change), the department may rescind this Restrictive Covenant and Grant of Access.

15. Disputes

Any disputes regarding provisions of this covenant that cannot be resolved by the department and the property owner will be addressed pursuant to 10 CSR 25-15.010(9).

16. Institutional Control Contract

The department's Hazardous Waste Program requires that owners of property enrolled in the Voluntary Cleanup Program for which a Restrictive Covenant and Grant of Access is required, enter into an Institutional Control Contract with the

department. Owner of the Property has entered into such an Contract with the department. Said Contract is attached hereto as Exhibit D and by this reference made a part hereof.

SIGNATURES

The undersigned property owner or person executing this Restrictive Covenant and Grant of Access on behalf of the Owner represents and certifies that they are truly authorized and have been fully empowered to execute and deliver this Restrictive Covenant and Grant of Access.

STATE OF MISSOURI)
) SS
COUNTY OF)

Property owner(s) or authorized representative(s) thereof

Type or Print : _____ Signature _____ Date: _____

Type or Print : _____ Signature _____ Date: _____

IN WITNESS WHEREOF, the Owner(s) or Owner's authorized representative(s) of the above-described Property has caused this Restrictive Covenant and Grant of Access to be executed on this _____ day of _____, 20____. Signed in the presence of Property Owner/Authorized Representative subscribed and acknowledged.

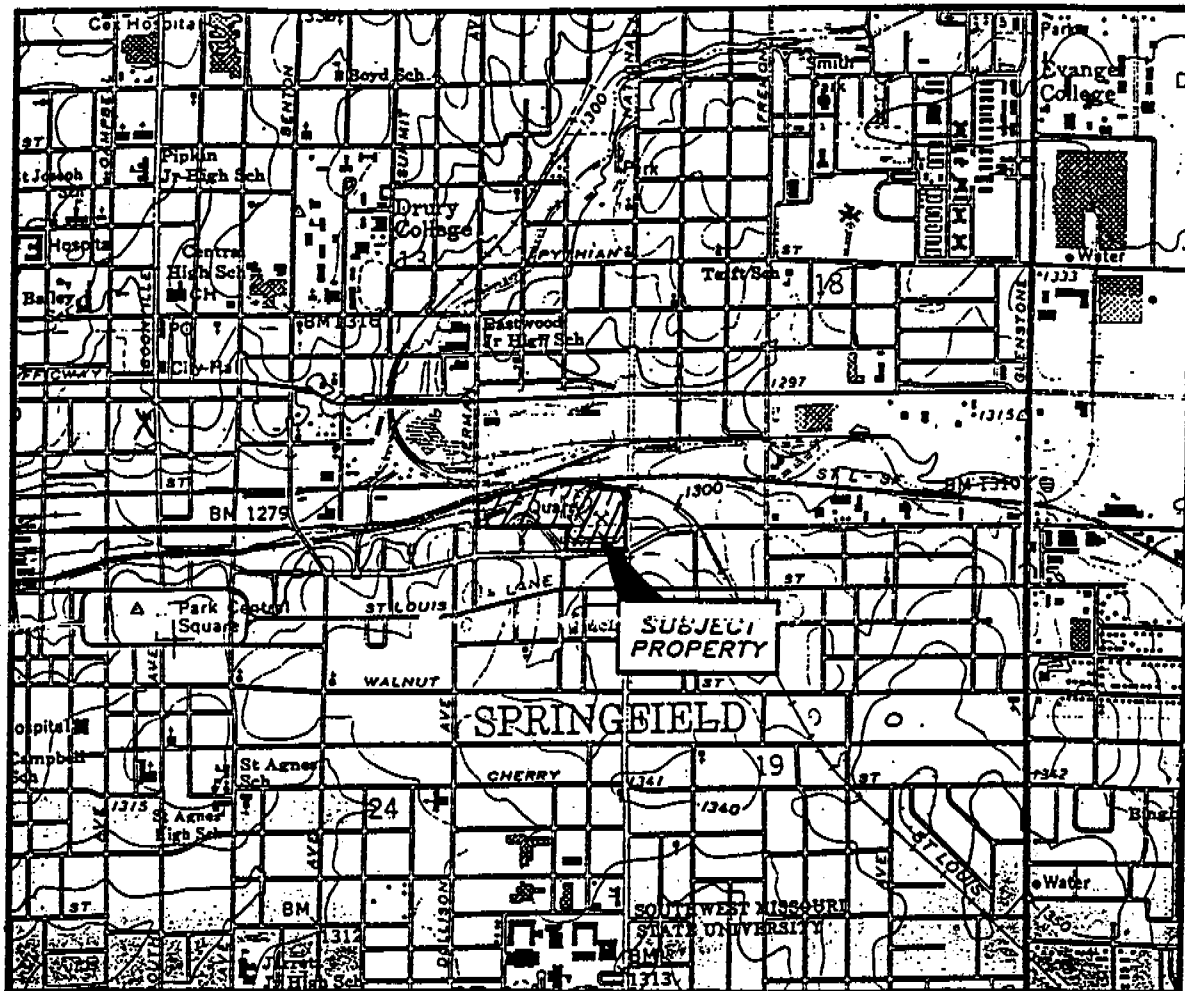
Subscribed and acknowledged before me this _____ day of _____, 20____.

Notary Public

My commission expires _____.

EXHIBIT A

SITE MAP



Source: USGS 7.5' Quad Springfield, MO Photorevised 1975



The Forrester Group
INCORPORATED
ENVIRONMENTAL MANAGEMENT CONSULTANTS

TITLE:

10

FIGURE 1
LOCATION MAP

SPRINGFIELD, MISSOURI

EXHIBIT B

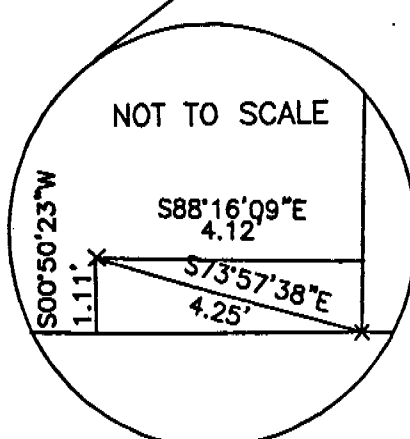
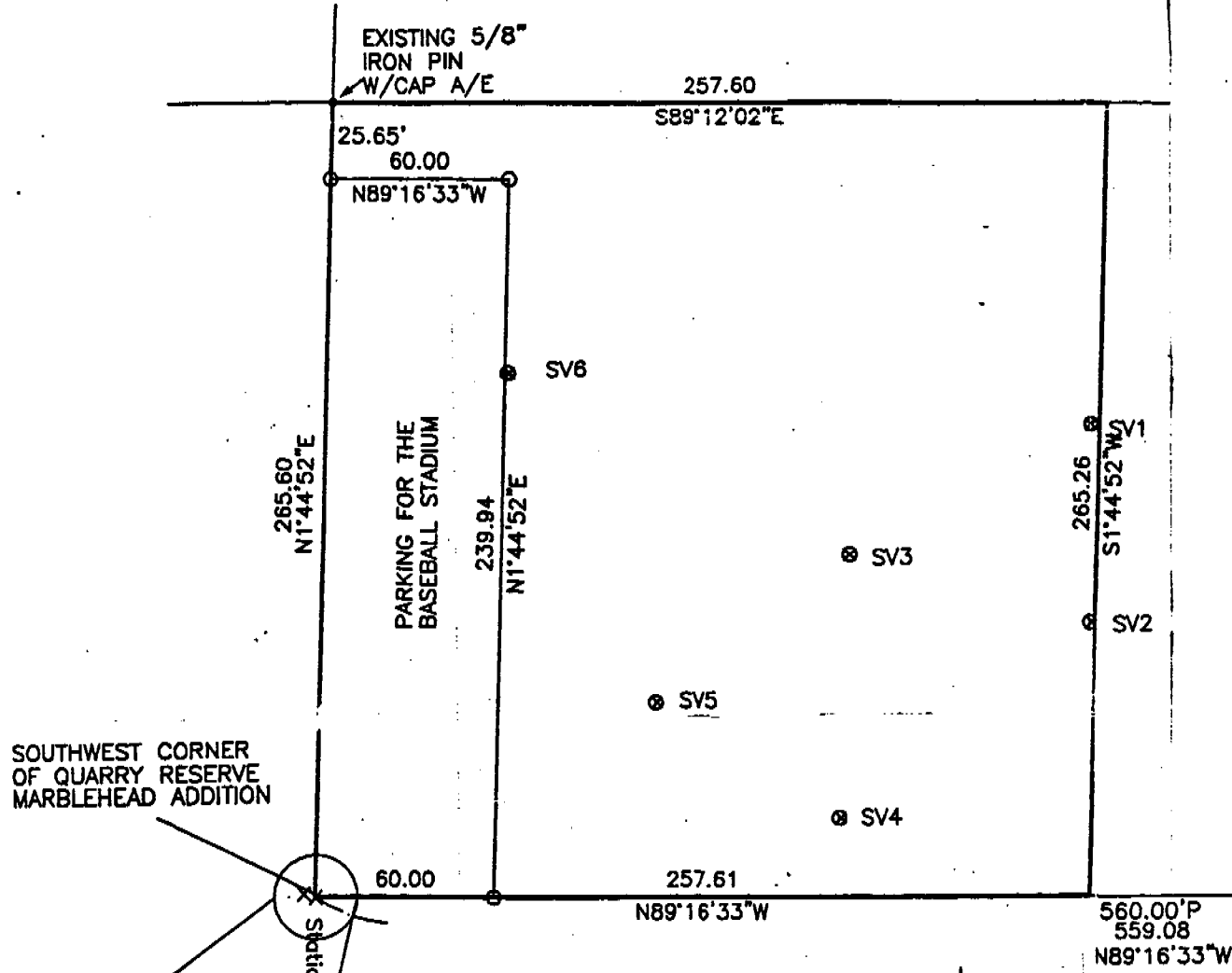
PROPERTY LEGAL DESCRIPTION

Description for area encompassing Monitoring Wells:

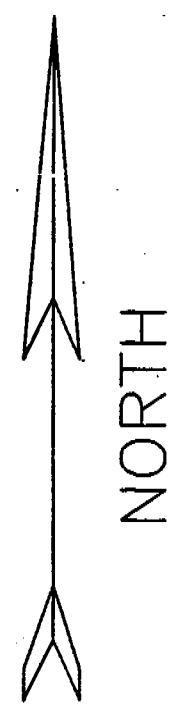
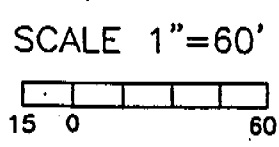
Beginning at a cross, cut in a driveway approach at the Southwest corner of Quarry Reserve Marblehead Addition; Thence along the West line of said Quarry Reserve, N1°44'52"E a distance of 265.60 to an existing Anderson Engineering monument; Thence S89°12'02"E a distance of 257.61 feet; Thence S1°44'52"W a distance of 265.26 feet to the North right of way of East Trafficway; Thence along said right of way, N89°16'33"W a distance of 257.61 feet to the Point of Beginning. Tract contains 1.57 acres and may be subject to easements of record.

EXHIBIT C

SURVEYED PARCEL OF THE PROPERTY



- LEGEND:
- X = cross cut in concrete.
 - = found monument as noted.
 - ⊗ = monitoring well



Bearings are based on City of Springfield control monuments, Borstead1 and Brann1

14

EXHIBIT D

B/VCP INSTITUTIONAL CONTROL CONTRACT

**BROWNFIELDS/VOLUNTARY CLEANUP PROGRAM (B/VCP)
INSTITUTIONAL CONTROL CONTRACT**

The city of Springfield has entered into a Letter of Agreement pursuant to the Voluntary Cleanup Program, §260.565, *et seq.*, RSMo, with the Missouri Department of Natural Resources (department) for the former Ash Grove Quarry, a site of environmental contamination located at East Trafficway at National, in the city of Springfield, Greene County, Missouri.

The site or facility (hereafter "site") has been remediated to a level safe for its current or intended use as specified in the department-approved remedial action plan provided that certain risk reduction and exposure control measures remain in place. The department has an obligation to protect human health and the environment and to assure that all of the risk reduction and exposure control measures in the remedial action plan (and any amendments thereto) remain intact, functional, and able to serve their intended purposes.

NOW THEREFORE, city of Springfield, 840 Boonville Avenue, Springfield, Missouri, (hereafter referred to as the "Owner") hereby agrees that:

1. The Owner shall pay to the department a one-time fee of \$5000.00 to be used to fund regular inspections of the risk reduction and exposure control measures implemented at the site for as long as necessary.
2. The Owner agrees to execute and file with the Greene County Recorder of Deeds a Restrictive Covenant and Grant of Access pertaining to management of the contamination.

3. The Owner shall file this Agreement and the Restrictive Covenant and Grant of Access with the Greene County Recorder of Deeds within five (5) days of execution of this agreement and provide to the department evidence of such recording, to include a true copy of the documents as filed and stamped by the Greene County Recorder of Deeds.
4. A copy of the Certification of Completion shall be filed by the Owner with the Greene County Recorder of Deeds in the chain of title for this property. If the department determines that the Owner has failed to comply with the terms of this Agreement or the Restrictive Covenant and Grant of Access, or fails to comply with the terms of the Letter of Agreement or fails to comply with the department-approved remedial action plan, the Certification of Completion Letter as provided by the department pertaining to this site may be rescinded and deemed null and void at the discretion of the department. In this event, a notice shall be filed by the department with the Greene County Recorder of Deeds in the chain of title for this site that confirms the rescission of said Certification of Completion Letter.

The undersigned person executing this Agreement on behalf of the Owner represents and certifies that they are truly authorized and have been fully empowered to execute and deliver this Agreement.

IN WITNESS WHEREOF, the Owner of the site has caused this agreement to be executed on this _____ day of _____, 20____.

Signed in the presence of Property Owner subscribed and acknowledged.

Signature of Owner

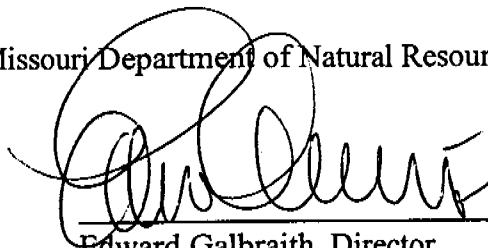
Subscribed and acknowledged before me this ____ day of _____, 20____.

Notary Public

My commission expires _____.

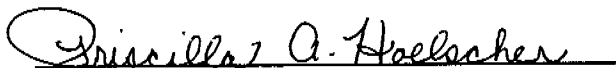
IN WITNESS WHEREOF, the Missouri Department of Natural Resources has caused
this agreement to be executed on this 7th day of October, 2003.

Signed in the presence of the Missouri Department of Natural Resources subscribed and
acknowledged.



Edward Galbraith, Director
Hazardous Waste Program
Missouri Department of Natural Resources

Subscribed and acknowledged before me this 7th day of October, 2003.


Notary Public

My commission expires December 3, 2005.

PRISCILLA A. HOELSCHER
NOTARY PUBLIC STATE OF MISSOURI
COUNTY OF COLE
MY COMMISSION EXPIRES:
DECEMBER 3, 2005

Aff. Agcy. Noticed _____
Emergency Required _____
P. Hrngs. Required _____
Fiscal Note Required _____
Board Rec. Required _____

EXPLANATION TO COUNCIL BILL NO. 2003 -

ORIGINATING DEPARTMENT: Law

PURPOSE: Authorize the City Manager to execute A Restrictive Covenant and Grant of Access to the MDNR for a portion of the Quarry property at National Avenue and East Trafficway.

REMARKS: When the City acquired the Quarry property at National Avenue and East Trafficway, the property was placed in the State's Voluntary Compliance Program (VCP), which is operated by the Missouri Department of Natural Resources (MDNR). After dewatering the former quarry and installing monitoring wells for methane gas in a limited area of the former quarry property, the State has determined that a "no further action" letter will be given by MDNR to the City upon the City agreeing to and recording a Restrictive Covenant and Grant of Access to MDNR. Basically this tells us that the property is environmentally clean, although the City will be required to continue to monitor the level of methane gas and to restrict the use of a very small area of the Quarry property, which area is shown on the attached exhibit.


Buildings cannot be constructed in this area, nor can it be used for residential purposes, and access must be restricted except for baseball parking in the small area shown on the sketch map which is attached.

Submitted by:



City Attorney

Approved by:



City Manager

EXISTING 5/8"
IRON PIN
W/CAP A/E

RESTRICTED AREA

257.60

S89°12'02"E

25.65'

60.00

N89°16'33"W

BASEBALL
STADIUM

265.60
N1°44'52"E

PARKING FOR THE
BASEBALL STADIUM

239.94
N1°44'52"E

SV6

MONITORING
AREA -

SV3

265.26
S1°44'52"W

SV2

SV5

SV4

SOUTHWEST CORNER
OF QUARRY RESERVE
MARBLEHEAD ADDITION

60.00

257.61

N89°16'33"W

560.00'P
559.08
N89°16'33"W

EAST TRAFFICWAY

Station 00+0

NOT TO SCALE

S00°50'23"W

1.11'

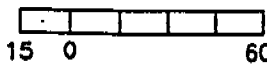
S88°16'09"E
4.12'

S73°57'38"E
4.25'

LEGEND:

- X = cross cut in concrete.
- = found monument as noted.
- ⊙ = monitoring well

SCALE 1"=60'



NORTH

Bearings are based on City of Springfield
control monuments, Barstead1 and Brann1

QUARRY